

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	WT Docket No. 02-381
Services to Rural Areas and Promoting)	
Opportunities for Rural Telephone Companies)	
To Provide Spectrum-Based Services)	
)	
2000 Biennial Regulatory Review Spectrum)	WT Docket No. 01-14
Aggregation Limits For Commercial Mobile)	
Radio Services)	
)	
Increasing Flexibility to Promote Access To and)	WT Docket No. 03-202
The Efficient and Intensive Use of Spectrum and)	
The Widespread Deployment of Wireless Services,)	
And To Facilitate Capital Formation)	

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Powerwave Technologies, Inc. (“Powerwave”), by its counsel, hereby requests that the Commission accept this Reply to the Oppositions to Powerwave’s Petition for Reconsideration filed by Ericsson Inc., Motorola, Inc. and the Wireless Association (“CTIA”) in the above-captioned proceeding.¹

Powerwave is a leading supplier of radio frequency power amplifiers in both the North American and European markets. Powerwave designs, manufactures and markets single and multi-carrier ultra-linear power amplifiers for a variety of radio services and transmission protocols. The company’s products are key components in PCS and AWS communications networks, including those found in rural markets, the focus of this rulemaking. Powerwave’s Petition seeks merely to avoid a situation whereby conflicting or incongruous Commission

¹ This Reply is late-filed due to an unaccountable postal delay. Mail postmarked April 21, 2005, including service copies of the Oppositions, was not delivered to Powerwave’s counsel until May 3, 2005. Ericsson, Motorola and CTIA do not object to this late filing.

regulations require amplifier manufacturers to market separate product lines for urban and rural markets.

The Right Hand Must Know What the Left Hand is Doing

In its Petition for Reconsideration, Powerwave requested that the Commission hold in abeyance application of the base station power limits for PCS and AWS base stations serving rural areas, pending the outcome of the 2002 Biennial Review proceeding.² In order to provide rural subscribers with the benefits of PCS and AWS, the Commission amended its rules to permit the doubling of the EIRP and peak power limits for rural areas.³ As Powerwave explained, however, it does not oppose power increases for rural PCS and AWS operators; rather, its sole concern was that the Commission had already proposed amendments to the broadband PCS power limits in the 2002 Biennial Review and if these were adopted, the Rural Wireless Order would not have a mechanism for taking these higher limits into consideration absent a further rulemaking.

More specifically, in its 2002 Biennial Review Notice, the Commission proposed that Section 24.232(a) apply the 100 watt peak power limit for PCS base stations on a per carrier basis or be eliminated altogether. There were no objections to this proposal. The Commission also proposed to clarify that the PCS base station EIRP limit of 1640 watts be determined on a per carrier basis or replaced with a power spectral density limit.⁴

² In the 2002 Biennial Review, the Commission agreed with Powerwave that the PCS base station power limits, as currently drawn and interpreted, discriminate against the use of multi-channel power amplifiers.

³ The Commission amended Section 24.232(a) for broadband PCS systems and Section 27.50(d)(1) for AWS systems, increasing EIRP to 3280 watts per base station and the peak power limitation to 200 watts per transmitter.

⁴ Powerwave has also brought the 2002 Biennial Review proposals to the Commission's attention in the context of the AWS proceedings. See *Petition for Reconsideration of Powerwave Technologies, Inc.*, WT Docket No. 02-353, Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz bands (March 8, 2004) and *Comments of Powerwave Technologies, Inc.*, WT Docket No. 04-356, Service Rules for Advanced Wireless Services in the 1915-

The parties opposing Powerwave's Petition are primarily concerned that holding the application of the rural wireless power limits in abeyance will delay provision of broadband services to rural markets. Powerwave's Petition, however, was based on its assumption that adoption of amendments to the PCS rules was imminent and, having placed on the record its concerns about the necessity of harmonizing the standards adopted in the rural wireless proceeding with amendments adopted in the 2002 Biennial Review, the Commission would be able to act quickly to conform the standards and move on with its rural wireless agenda without further delay. Unfortunately, to date, there has been no action on the 2002 Biennial Review which has been languishing in administrative limbo for the last year and a half. Under the circumstances, therefore, Powerwave no longer believes the public interest would be served by delaying application of the rural wireless regulations. Nonetheless, it continues to believe that if the Commission proceeds with new power limits for rural wireless services without some mechanism for flexibly revising those limits should they be eclipsed by re-defined standards for PCS and AWS systems, the rural public will not be served as intended and the Commission will have to engage in further rulemaking to rectify the situation.

The Record is Sufficient to Recognize the Results of the 2002 Biennial Review

It is Powerwave's intention to place, on the record in this proceeding, the information necessary to enable the Commission to harmonize rural wireless power limits with revised PCS and AWS system limits without the necessity of engaging in another time-consuming rulemaking proceeding. The Commission could have taken notice of the 2002 Biennial Review proposals in the Rural Wireless proceeding. Had it done so, it could easily have made it clear that its

1920 MHz, 1995-2000 MHz, 2020-2-25 MHz and 2175-2180 MHz Bands (December 8, 2004). In these proceedings the 2002 Biennial Review proposals were also ignored.

adoption of rural PCS and AWS power limits would track whatever changes were adopted in the Biennial Review. Powerwave believes it is not too late for the Commission to act in this manner.

Given the Commission's stated desire to increase power output for rural wireless systems and, having established a record which has alerted it to the 2002 Biennial Review proposals, it can, even now, state that it will adjust the rules adopted in the rural wireless proceeding to comport with the rules adopted in the 2002 Biennial Review without engaging in further notice and comment proceedings.⁵ Indeed, the Commission could simply state that since it intends to permit rural PCS and AWS systems to operate with twice the power as non-rural systems, it will cross-reference the PCS and AWS rules so that whatever power limits are eventually adopted in the 2002 Biennial Review will automatically be doubled for rural systems.⁶

As Powerwave noted in its Petition, if the Commission proceeds to adopt a 200 watt peak power and 3280 EIRP limit for rural wireless systems before it concludes its lengthy deliberations in the 2002 Biennial Review, it will have created the anomalous situation where a manufacturer of equipment, like Powerwave, will be required to obtain FCC approval for two lines of equipment – one limited to a 100 watt urban level and the other to the 200 watt rural level – along with the implied condition that Powerwave will have to know the difference between urban and rural markets and then police where its equipment may lawfully be installed. The Commission rules should not impose such unnecessary regulatory requirements on manufacturers and base station operators.

⁵ See Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 547 (D.C. Cir. 1983)

⁶ Powerwave presumes that the AWS power limits will be conformed to the limits adopted for PCS systems in the 2002 Biennial Review.

Conclusion

Powerwave urges the Commission not to ignore its own pending proposals in the 2002 Biennial Review and to adopt a flexible regulatory scheme in the rural wireless proceeding to allow orderly implementation of new power limits for PCS and AWS base stations. Neither manufacturers nor the public should have to wait for yet another round of rulemaking proceedings to conclude these seemingly straightforward issues. Regulating in the void can only result in confusion and delay.

Respectfully submitted,

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